

Assembly Bill No. 2717

Passed the Assembly August 12, 2010

Chief Clerk of the Assembly

Passed the Senate August 9, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 787.1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2717, Skinner. Insurance: agents and brokers: senior designation: use.

Existing law provides that a broker or agent may not use a senior designation unless he or she has met certain conditions, including, but not limited to, that the broker or agent has been granted the right and is currently authorized to use the senior designation by the organization that issues the designation, and the senior designation has been approved by the Insurance Commissioner for use by brokers and agents in the sale of insurance to seniors, as provided.

This bill would require that the commissioner approve a senior designation only if the organization that issues the designation satisfies specified requirements, including, but not limited to, accreditation standards, education and examination requirements, and having minimum standards and procedures regarding disciplining the organization's designees for improper or unethical conduct.

The bill would authorize the commissioner to rescind approval of a designation, under specified circumstances, after notice and a hearing conducted by an administrative law judge, pursuant to the administrative adjudication formal hearing provisions of the Administrative Procedure Act.

This bill would also make conforming changes and delete obsolete provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 787.1 of the Insurance Code is amended to read:

787.1. (a) The following definitions apply to this section:

(1) "Senior designation" means any degree, title, credential, certificate, certification, accreditation, or approval, that expresses

or implies that a broker or agent possesses expertise, training, competence, honesty, or reliability with regard to advising seniors in particular on finance, insurance, or risk management.

(2) “Use” means utilizing a word, phrase, acronym, or logo, in any oral or written communication from which a sale of insurance to a senior may directly or indirectly result, that states or suggests, alone or in context, that a broker or agent holds a senior designation.

(b) (1) A broker or agent may not use a senior designation unless all of the following conditions have been met:

(A) The broker or agent has been granted the right to use the senior designation by the organization that issues the senior designation, and the broker or agent is currently authorized by the organization to use the designation.

(B) The senior designation has been approved by the commissioner for use by brokers and agents in the sale of insurance to seniors.

(C) The broker or agent has been licensed for at least four years in any state or United States territory to sell the types of insurance with which the designation is used.

(2) A broker or agent may not use a senior designation in a manner that misleads a person as to the significance of the senior designation. Each time a broker or agent uses a senior designation in a writing, the writing shall also contain the words “California” or “CA” next to “Insurance Agent” or “Insurance Broker Agent” and “License,” and these words shall be located immediately prior to the broker’s license number or the agent’s license number, in type that is in the same font and at least the same size as the type used for the senior designation. The requirements set forth in this subdivision are in addition to the requirements of Section 1725.5 and shall apply regardless of whether the broker or agent is an insurance agent, as defined in Section 1621. For purposes of this paragraph, “writing” means business cards, written price quotations, and print advertisements distributed exclusively in this state.

(c) The commissioner shall approve a senior designation only if the organization that issues the designation satisfies all of the following requirements with respect to the designation:

(1) The organization has applied for approval on a form prescribed by the commissioner.

(A) The department may require the filing of any supplementary documents and declarations it deems necessary to determine whether the prerequisites for approval have been met.

(B) Before or after approval, an organization shall notify the department in writing within 45 days following any material change in information recorded on the application form or in declarations or documents submitted along with it or in response to a department request.

(2) The designation is accredited by the National Commission for Certifying Agencies, or the organization or the designation is accredited by an agency that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and it is established to the satisfaction of the commissioner that the agency is qualified to accredit an organization or designation involved with financial services provided to seniors.

(3) The organization requires California candidates for the designation to demonstrate superior expertise in advising seniors in particular in finance, insurance, or risk management by passing examinations that are based on applicants with no prior insurance education or experience completing at least 75 hours of study covering at least the following topics: aspects of aging, health care coverage, long-term care insurance, financial planning for retirement, investments, estate planning, and ethics. Textbooks or other study materials may use chapter and subchapter titles that differ from those general topics as long as the essential content is the same. No part of the examinations, textbooks, or other study materials may concern techniques on how to increase the amount of insurance or financial products one sells, nor recommend the selling of products offered by specific companies.

(d) (1) In determining whether to approve a senior designation for use in the sale of insurance to seniors, the commissioner shall also ensure that the organization that issues the senior designation fulfills the following:

(A) Is exclusively an educational or certification organization, and is not directly or indirectly, through an affiliate or partner, involved in selling insurance, nor receives any compensation directly or indirectly from any sale of insurance, other than the receipt of charitable gifts by a nonprofit institution.

(B) Maintains standards and procedures for disciplining its designees for improper or unethical conduct, as established by proven complaints or by disciplinary action by a government licensing agency or a quasi-governmental licensing and regulatory organization. The standards and procedures shall include, at a minimum:

(i) A written procedure to receive, log, and conduct a preliminary review of complaints alleging improper, illegal, or unethical conduct.

(ii) Written standards for determining when a complaint warrants further investigation into the merits of the allegations contained therein.

(iii) Written standards and procedures to ensure that, once a complaint is determined to warrant further investigation, the investigation is diligently conducted.

(iv) Written standards for determining when to file disciplinary charges based on the results of an investigation.

(v) Written standards and procedures to ensure due process in the adjudication of disciplinary charges by adjudicators who are fair, knowledgeable, and otherwise qualified.

(vi) Written standards and procedures for the imposition of appropriate sanctions, including, when warranted, revocation of the designation.

(C) Maintains a code of ethics for its California designees consistent with that of one of the designations recited in Section 1749.4.

(e) (1) A word, phrase, acronym, or logo shall be deemed a senior designation if it contains the word “senior,” “Medicare,” “Medi-Cal,” “retire,” “mature,” “gerontology,” or “elder,” or any variation or synonym of one of these words within several words of the word “certified,” “chartered,” “registered,” “adviser,” “specialist,” “consultant,” “agent,” “broker,” “insurance,” “planner,” “professional,” “enrolled,” “accredited,” “analyst,” or “fellow,” or any variation or synonym of one of these words. A word, phrase, acronym, or logo may constitute a senior designation if it meets the definition in paragraph (1) of subdivision (a) regardless of whether it contains one of the words recited in this subdivision.

(2) A word, phrase, acronym, or logo shall not constitute a senior designation if it is a job title or description of an employee of a

governmental entity, or of an organization with a contract with that governmental entity to provide free counseling to seniors.

(3) No exemption exists under this section for use of a senior designation that constitutes a job title or description or part of a job title or description, except as provided in paragraph (2).

(4) An advanced academic degree, such as a Ph.D., M.B.A., or M.S., may be used without compliance with subdivision (d), if the degree was awarded by an institution of higher education that has been accredited by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(f) A violation of subdivision (b) by a broker or agent shall be grounds for suspension or revocation of the broker's or agent's license pursuant to Sections 1668 and 1738. Such a violation also shall be grounds for a cease and desist order and monetary penalty pursuant to Section 12921.8, as if the broker or agent had acted in a capacity for which a license was required but not possessed.

(g) Any person who grants to a California resident the right to use a senior designation that has not been approved by the commissioner, without reasonably attempting to determine whether California is one of the designee's residences, shall be subject to a cease and desist order and monetary penalty pursuant to Section 12921.8, as if the person had acted in a capacity for which a license was required but not possessed.

(h) The disciplinary and remedial authority recited in this subdivision shall be in addition to any other disciplinary and remedial authority included in this code.

(i) Notwithstanding any other provision of this code, the criteria in Sections 1668 and 1668.5 apply to an organization that issues a senior designation, and the commissioner may deny or rescind approval of an organization issuing a senior designation based on that criteria.

(j) The commissioner shall maintain a list of senior designations approved pursuant to subdivisions (c), (d), and (e) and shall publish the current list on the Internet Web site of the Department of Insurance.

(k) This section shall apply to all types of insurance, including those listed in paragraphs (1) and (2) of subdivision (c) of Section 785, except those listed in paragraphs (3) to (7), inclusive, and

paragraph (9) of subdivision (c) of Section 785 and subdivision (d) of Section 785.

(l) The commissioner may, upon receipt of a petition from an organization, issue written confirmation that a designation issued by that organization is exempt from the requirement of approval pursuant to this section. The commissioner may issue confirmation if the designation, according to its title or curriculum, or in its actual use, concerns almost exclusively subject matters other than insurance or financial services sold to seniors in particular.

(m) (1) The commissioner may rescind approval of a designation whenever there has been a material change in the management or operation of the organization that issues the designation, or in the procedures or criteria for issuance of the designation, such that if the organization were to apply for approval of the designation subsequent to the change, approval would be denied.

(2) Any rescission of the approval of a designation shall be after notice and a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, as if the approval were a license, and the commissioner shall have all of the powers granted therein.

Approved _____, 2010

Governor